IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

RSA.No. 494 of 2007()

(AGAINST THE JUDGMENT AND DECREE DATED 31/05/2006 OF THE COURT OF THE SUBORDINATE JUDGE, HOSDRUG IN AS.14/2004, PREFERRED FROM THE JUDGMENT DATED 24/01/2004 OF THE COURT OF THE MUNSIFF, HOSDRUG IN OS.26/1999)

.....

APPELLANT/APPELLANT/PLAINTIFF:

HARIJAN VELLAN, S/O HARIJAN CHINKAN,
RESIDING AT MANDENGANAM, BELUR VILLAGE,
HOSDRUG TALUK.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT: RESPONDENT/DEFENDANT

ANDRUMAN, AGED 75 YEARS,
S/O MUDIKKARAN IBRAHIM, AGRICULTURIST,
RESIDING AT PARAPPALY, BELUR VILLAGE,
HOSDRUG TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO. 494 OF 2007

==========

Dated this the 10th day of July, 2007

JUDGMENT

Plaintiff in O.S.26/99 on the file of Munsiff Court, Hosdrug is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for permanent prohibitory injunction in respect of 3.80 acres in R.S.103/1 of Belur Village contending that he obtained 4.30 acres as per Ext.A1 order in O.A.2106/1972 and also obtained properties under two other different O.As and he alienated portions of the properties and the remaining extent in his possession is 3.80 acres and it is the plaint schedule property and he is in absolute possession and enjoyment of the property covered under Ext.A2 purchase certificate and respondent has no manner of right or possession over the same and he attempted to trespass into the plaint schedule property and is to be restrained by a decree for perpectual injunction. Respondent

filed a written statement contending that appellant is not in possession of the plaint schedule property and the description and identity of the plaint schedule property are not correct and he surrendered 5.08 acres in R.S.103/pt as excess land and there is a road by name Iriya-Belur-Mavikandam passing through the surrendered property and the road came into existence in 1965 and 3.08 acres and 2 acres are lying on either side of the road and that property was assigned to landless people and intention of the appellant is to grab the property and therefore he is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1, DW1 and CW1 and Exts.A1 to A7 and C1 and C2 found that though appellant claimed that he had alienated portions of the properties obtained under Ext.A2 purchase certificate and also two other purchase certificates, the assignment deeds were not produced and the identity of the plaint schedule property has not been established and the

description of the plaint schedule property does not tally with the description seen in Ext.A2 purchase certificate and therefore appellant is not entitled to the decree for injunction sought for. Appellant challenged the decree and judgment before Sub Court, Hosdrug in A.S.14/2004. Learned Sub Judge on reappreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard.

4. The arguments of the learned counsel appearing for the appellant was that appellant had filed an application before the trial court to remit the report back to the Commissioner and it was dismissed and in such circumstance, courts below should not have dismissed the suit for not establishing the identity of the plaint schedule property. It was further argued that respondent contended that there is a road which was formed later after he surrendered excess land and it is

not proved and on the evidence courts below should have found that the appellant is entitled to the decree sought for.

5. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal.

6. The suit is only for injunction. Appellant is entitled to get a decree only on establishing the identity of the plaint schedule property as well as his possession of the plaint schedule property. The description of the plaint schedule property does not tally with the description seen in Ext.A2 purchase certificate obtained by the appellant. Even according to appellant, he had alienated portions of the property under different assignment deeds and claims that plaint schedule property is the balance extent which remained with him. Appellant did not produce those assignment deeds, which would have enabled the court to find out what was the property left behind and its identity. Without producing those documents, there

is no substance in contending that trial court should have remitted the report back to the Commissioner. In such circumstance both the courts concurrently found that appellant did not establish the identity of the plaint schedule property. That factual finding cannot be interfered with in exercise of the powers of this court under section 100 of the Code of Civil Procedure.

As no substantial question of law is involved, the appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006